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Judge Refuses to Release Material From Spy Trial

Two Classified Documents Under Review

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U.S. District Judge Claude M. Hilton denied a request yesterday to unseal four documents relating to the recent conviction of a Ghanaian spy in a closed session of his court, saying the documents contained classified information.

Assistant U.S. Attorney Theodore S. Greenberg said that the government is reviewing two of the documents and may release unclassified versions of them as early as next week. But Greenberg said the government "has no intention" of releasing two affidavits from officials at the State Department and the attorney general's office because "they are written in such a manner that they cannot be made unclassified."

Attorney John H. Rust Jr., representing The Washington Post, argued yesterday in Hilton's Alexandria courtroom that Hilton improperly had used the Classified Information Procedures Act last month to close the trial of Michael A. Soussoudis to the public.

Soussoudis, a cousin of Ghanaian leader Flight Lt. Jerry Rawlings, pleaded no contest during the closed hearing Nov. 18 to receiving classified information from a former Central Intelligence Agency employee in Ghana who had then been his lover there. Eight days later at the second closed session Hilton sentenced Soussoudis to a 20-year prison term but immediately suspended it on condition he leave the United States within 24 hours.

The day he was sentenced Soussoudis was exchanged by American authorities with the Ghanaian government for several Ghanaians who had allegedly worked with the CIA in the West African country.

Rust said that the act Hilton used should be applied only in pretrial hearings to determine whether certain evidence can be admitted during a later open trial. The law "does not permit the closing of a trial, or the closing of a sentencing or the closing of a plea," he said.

"Assuming that's true, what would give your client the right to have classified information [in the four documents]?" Hilton asked Rust.

"The public has a right to those materials," Rust said, because the documents were presented as "an essential part of the sentencing of Mr. Soussoudis" and were part of a criminal case.

The documents in dispute were presented to Hilton by prosecutors to justify their request that two court hearings involving Soussoudis be closed. Although Hilton closed the hearings, he allowed representatives from the Ghanaian Embassy to attend them.

Hilton had ordered transcripts of the two closed proceedings made public after the exchange was completed but kept the four documents under seal at the request of government lawyers.

Greenberg told Hilton yesterday that the classified act had been properly used and is applicable to all aspects of a criminal proceeding, including the appellate stage.

Hilton said he believed the act "is broad enough" to cover the manner in which the hearings were closed to the public.

Rust said the newspaper would appeal Hilton's ruling to the 4th U.S. Circuit Court of Appeals in Richmond.

Greenberg, who argued against the newspaper's request, suggested the paper's only recourse may be to request the documents through the Freedom of Information Act.